

**EXHIBIT 7**

## FCC MAIL SECTION

Before the  
Federal Communications CommissionWashington, D.C. 20554  
FEB 12 3 43 PM '90

DISPATCHED MM Docket No. 90-8 ✓

In re Applications of

EVE ACKERMAN File No. BPH-871123MA  
(hereafter "Ackerman")CHARLEY C. WHITE AND File No. BPH-871124MC  
GREGORY G. PERICH  
(hereafter "White")WAYNE G. FIELDS AND File No. BPH-871124ME  
GERALDINE Y. MILLER  
d/b/a L.L.  
BROADCASTING  
(hereafter "Broadcasting")ALACHUA File No. BPH-871124MN  
BROADCASTERS,  
INC.  
(hereafter "Alachua")BRENT L. HARMON AND File No. BPH-871124MQ  
ELVIN L. HARMON  
d/b/a HARMON  
BROADCAST PARTNERS  
(hereafter "Harmon")LYNN T. RIVERS AND File No. BPH-871124MV  
JAMES S. RIVERS III  
(hereafter "Rivers")MINORITY MEDIA, File No. BPH-871216ML  
INC. (Previously Dismissed)  
(hereafter "Media")For Construction Permit  
for a New FM Station on Channel 223A  
in Alachua, Florida

## HEARING DESIGNATION ORDER

Adopted: January 9, 1990; Released: February 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Alachua*. *Alachua* responded "no" to Section III, FCC Form 301 ("Financial Qualifications"), stating that "Arrangements are being prepared at this time for financial backing, once finalized we will make an amendmentto the application." Accordingly, since no evidence has been produced indicating that *Alachua* has obtained the necessary financing, a financial issue will be specified.3. *Media*. On February 12, 1988, *Media* filed a Petition for Waiver of Tenderability Defect Code ("Petition"), seeking reversal of the January 13, 1988 return of its application by the Chief, FM Branch. *Media's* application was found untenderable because it was filed after November 24, 1987, the close of the applicable window. See 47 C.F.R. § 73.3564(d) of the Rules.<sup>1</sup>4. The *Media* Petition states it mailed its application to the Commission "before midnight 24 November 1987," and claims that, "the fact that the application was delayed by U.S. mail service and further by the Commission FM Branch Service should be lawful grounds for the Commission to waive the tenderability defect . . ." *Media* further asserts that "the statue (sic) provied (sic) by Congress on Minority Ownership of Broadcast Stations should superse (sic) and prevail over the Tenderability Defect Code cited by the FM Branch Chief (because) [it] was the sole Minority applicant for the proposed channel . . ." *Petition*, para. 7.<sup>2</sup>5. A petition for reconsideration must be based upon newly discovered evidence or upon errors of fact or law in the action for which reconsideration is sought. See 47 C.F.R. §§ 1.106(c) and (d). In the absence of such a showing, reconsideration will not be granted for the purpose of reviewing matters which the Commission has already considered and resolved. *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *affd. sub nom. Lorain Journal co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert den.* 383 U.S. 967 (1966); *Employment practices of Charlotte, North Carolina Stations*, 77 FCC 2d 1 (1980). Furthermore, in accordance with the *Report and Order* in Docket 84-750, 50 FR 19936 (1985), the only basis for reversing an earlier finding of untenderability is a demonstration that the Commission erred in its earlier determination. See specifically Appendix D to the *Report and Order*, *supra*.6. We have examined the instant petition and have determined that the Commission did not make an error in returning the *Media* application as late-filed, and unacceptable for tender. While it is desirable to have as many qualified applicants as possible from which to select a broadcast licensee, "we have recently undertaken to place greater emphasis on providing service to the public in the most efficient, expeditious manner possible. TempORIZING with flawed proposals has in the past disserved the public interest by inordinately delaying the initiation of new service." *Chudy Broadcasting Corporation*, 58 RR 2d 133, 134, 134 n. 7 (1985). Moreover, concerning *Media's* minority status, *Media* has not demonstrated unusual or compelling circumstances to warrant favorable action, thus the request for waiver is hereby denied. See, *FCC Overrules Caldwell Television Associates, Ltd.*, FCC 85-534, Mimeo No. 36206, Released October 4, 1985. Accordingly, the *Media* petition will be denied.

7. Applicants have petitioned for leave to amend their applications on dates shown below. The accompanying amendments were filed after February 22, 1988 the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	DATE AMENDMENT FILED
White	7/15/88
Alachua	10/20/88, 3/15/89, 9/21/89
Rivers	12/19/88

8. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Alachua whether the applicant is financially qualified.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That the Media petition for reconsideration IS HEREBY DENIED.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by White, Alachua and Rivers ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 3.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 3.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in

such Rule, and shall advise the Commission of the publication of such notice as required by Section 3.3594(g) of the Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau

#### FOOTNOTES

<sup>1</sup> Media's application was originally received by the Commission on November 27, 1987 but was returned by the Fee Section based on the nonsubmission of the fee with the application. The application was re-filed with the requisite filing fee on December 16, 1987.

<sup>2</sup> On May 15, 1989, Media filed an additional pleading, styled "Additional Information In Support of Petition for Waiver of Tenderability Defect Code." In this pleading, Media maintains the FCC Fee Section was the "direct cause" of its application being returned and becoming subsequently untimely. In support of this contention, Media states that its application "shouldn't have been returned . . . for payment of its FCC application fees, because as stated on page two (2) of the petitioner (sic) FCC 301 application, the petitioner is clearly stating that it is a not-for-profit corporation," and "the FCC rules waive the application fee . . . for FM applicants of a not-for-profit corporation." We reject Media's argument as immaterial because, as noted above, the application was submitted on November 27, 1987 after the close of the filing window, irrespective of the applicability of fees to Media's application.

EXHIBIT 8

DUPLICATE RECEIVED  
FILE

MAR 29 1990

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

Federal Communications Commission  
Office of the Secretary

In re Application of ) MM Docket No. 90-8  
Charley C. White and )  
Gregory G. Perich ) File No. BPH-871124MC

For Construction Permit for  
a New FM Broadcast Station  
Alachua, Florida

To: The Honorable Joseph P. Gonzales  
Administrative Law Judge

MOTION FOR VOLUNTARY DISMISSAL

AND NOW, comes Charley C. White and Gregory G. Perich, by and through their counsel, Frederick A. Polner, Esquire and Rothman, Gordon, Foreman and Groudine, P.C., and hereby request that their application for a new FM broadcast station at Alachua, Florida (File No. BPH-871124MC) be dismissed. Applicants' Declaration of No Consideration with respect to this request is attached hereto.

Respectfully submitted,

CHARLEY C. WHITE AND  
GREGORY G. PERICH

By:   
Frederick A. Polner, Esquire

Their Attorney

ROTHMAN, GORDON, FOREMAN  
AND GROUDINE, P.C.  
0 GRANT BUILDING  
PITTSBURGH, PA 15219  
(412) 338-1100

DECLARATION OF NO CONSIDERATION

We, CHARLEY C. WHITE and GREGORY G. PERICH, do hereby declare under penalty of perjury that our application (File No. BPH-871124MC) was not filed for the purpose of reaching or carrying out any agreement pursuant to which we would be entitled to receive any consideration in return for the withdrawal of our application, and that we have not been paid or promised any consideration whatsoever, direct or indirect, in return for the dismissal of our application for a construction permit for a new FM broadcast station at Alachua, Florida.

Date:

March 1st 1990

Charley C. White

Date:

March 1st, 1990

Gregory G. Perich

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Voluntary Dismissal has been served upon the following parties of record, via U.S. Mail, postage pre-paid, this 29th day of March, 1990:

The Honorable Joseph P. Gonzales\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 221  
Washington, DC

Chief, Hearing Branch\*  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, DC

Chief, Data Management Staff\*  
Audio Services Division  
Mass Media Bureau  
1919 M Street, N.W., Room 350  
Washington, DC

Dennis J. Kelly, Esquire  
Cordon and Kelly  
Second Floor  
1920 M Street, Northwest  
Washington, DC 20036  
(Counsel to Eve Ackerman)


Malcolm G. Stevenson, Esquire  
Schwartz, Woods and Miller  
Suite 206, The Palladium  
1325 Eighteenth Street, N.W.  
Washington, DC 20036  
(Counsel to L. L. Broadcasting)

Donald E. Martin, Esquire  
Donald E. Martin, P.C.  
2000 L Street, N.W., Suite 200  
Washington, DC 20036  
(Counsel to Alachua Broadcasting, Inc.)

**\*HAND DELIVERED VIA MESSENGER**

James A. Koerner, Esquire  
Baraff, Koerner, Olender and Hochberg, P.C.  
2033 M Street, N.W., Suite 203  
Washington, DC 20036-3355  
(Counsel to Harmon Broadcast Partners)

Daniel F. VanHorn, Esquire  
Arent, Fox, Kintner, Plotkin and Kahn  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5339  
(Counsel to Lynn T. Rivers and James S. Rivers)

  
\_\_\_\_\_  
Mary Ann Tkacs, Secretary to  
Frederick A. Polner, Esquire



**EXHIBIT 9**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 90M-708

3175


In re Applications of	)	MM DOCKET NO. 90-8
	)	
EVE ACKERMAN	)	File No. BPH-871123MA
	)	
CHARLEY C. WHITE AND GREGORY G. PERICH	)	File No. BPH-871124MC
	)	
WAYNE G. FIELDS AND GERALDINE Y. MILLER	)	File No. BPH-871124ME
d/b/a L.L. BROADCASTING	)	
	)	
ALACHUA BROADCASTERS, INC.	)	File No. BPH-871124MN
	)	
BRENT L. HARMON AND ELVIN L. HARMON	)	File No. BPH-871124MQ
d/b/a HARMON BROADCAST PARTNERS	)	
	)	
LYNN T. RIVERS AND JAMES S. RIVERS III	)	File No. BPH-871124MV
	)	
For Construction Permit for a	)	
New FM Station on Channel 223A	)	
in Alachua, Florida	)	

O R D E R

Issued: April 3, 1990; Released: April 4, 1990

For good cause shown, IT IS ORDERED that the Motion for Voluntary Dismissal filed by Charley C. White and Gregory G. Perich on March 29, 1990, IS GRANTED, and their application for a new FM station on Channel 223A in Alachua, Florida (File No. BPH-871124MC) IS DISMISSED with prejudice.<sup>1</sup>

FEDERAL COMMUNICATIONS COMMISSION



Joseph P. Gonzalez  
Administrative Law Judge

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<sup>1</sup> Those applicants which have not already done so will submit a statement of no consideration for this request for voluntary dismissal within 14 days of the release date of this Order. So Ordered.

**CERTIFICATE OF SERVICE**

I, David Honig, this 23rd day of September, 1991, hereby certify that I have caused to be placed in U.S. First Class Mail, postage prepaid, the foregoing "Motion to Enlarge Issues" addressed to the following:

Hon. Edward Luton  
Administrative Law Judge  
Federal Communications  
Commission  
2000 L Street N.W.  
Washington, D.C. 20554

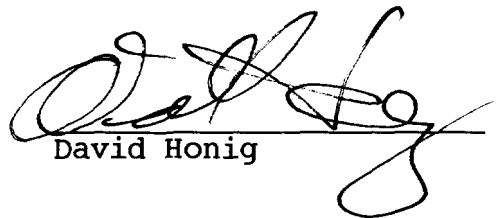
Y. Paulette Laden, Esq.  
FCC Hearing Branch  
2025 M Street N.W. #7212  
Washington, D.C. 20554

Charles Cecil White  
and Dianna White d/b/a  
White Broadcasting  
Partnership  
707 Newport Street  
Macclenny, FL 32063

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk  
2033 M Street N.W.  
Washington, D.C. 20036  
Counsel for Johnson

James L. Winston, Esq.  
Rubin Winston & Diercks  
1730 M St. N.W. #412  
Washington, D.C. 20036  
Counsel for Northeast

Avelino G. Halagao, Esq.  
7799 Leesburg Pike #900  
Falls Church, VA 22043  
Counsel for JEM



David Honig